

FILED
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT¹ UTAH: 47

FOR THE DISTRICT OF UTAH OF UTAH

BY: DEPUTY CLERK

ALLEN WOLFSON,

Plaintiff,

vs.

BRUCE PRICHETT,

Defendant.

MEMORANDUM DECISION and
ORDER OF DISMISSAL

Case No: 2:05-CV-875 TS

District Judge Ted Stewart

Allen Wolfson, a prisoner in New York and a citizen of Utah, has filed a *pro se* complaint that attempts to allege civil rights claims under 42 U.S.C. §§ 1985(3) and 1986 against his former escrow agent/attorney, Bruce Prichett, a private citizen who is also a Utah resident. After reviewing Wolfson's complaint, the court concludes that it must be dismissed for failure to state a claim and lack of jurisdiction.¹

Although Wolfson asserts jurisdiction under 28 U.S.C. § 1331² (federal question jurisdiction), he fails to assert any issues "arising under the Constitution, laws, or treaties of the United States."³ "To state a claim under § 1985(3), a plaintiff must show: (1) a conspiracy, motivated by racially-discriminatory animus; (2) to deprive plaintiff of equal protection of the law; (3) an act in furtherance of the conspiracy; and (4) a deprivation of rights resulting

¹See 28 U.S.C. § 1915(e)(2).

²"The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

³*Id.*

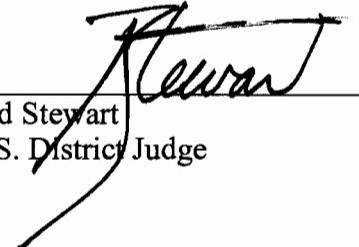
therefrom.”⁴ Wolfson has failed to allege any of these factors. Further, his claim under § 1986 also fails because it is dependent on the existence of a claim under § 1985.⁵ Consequently, Wolfson has failed to state any federal claim.

At most, Wolfson’s complaint can only be construed to assert claims of legal malpractice, a question of state law. Wolfson does not allege diversity of citizenship under 28 U.S.C. § 1332, but alleges that he is “a resident of Utah” and that Defendant is a licensed attorney in Utah.⁶ Wolfson could not allege diversity of citizenship because even though he is incarcerated in another state, Wolfson’s state of citizenship for purposes of diversity jurisdiction is still Utah.⁷ Because complete diversity is lacking and no federal claim is alleged, the court cannot exercise jurisdiction over the state law claims.⁸

IT IS HEREBY ORDERED that the complaint is DISMISSED.

March 24, 2006.

BY THE COURT:



Ted Stewart
U.S. District Judge

⁴*Paris v. Southwestern Bell Telephone Co.*, 94 Fed. App’x 810, 815 (10th Cir. 2004) (citing *Tilton v. Richardson*, 6 F.3d 683, 686 (10th Cir. 1993)).

⁵*Brown v. Chaffee*, 612 F.2d 497, 502 (10th Cir. 1979).

⁶Complaint, docket no. 3, filed October 24, 2005.

⁷*Ferrer v. Dailey*, No. 96-3155, 1996 WL 731618, at *1 (10th Cir. Dec. 20, 1996) (unpublished) (stating inmate’s state of citizenship is the state of which he was a citizen before he was sent to prison).

⁸See United Int’l Holdings Inc. v. Wharf (Holdings) Ltd., 210 F.3d 1207, 1220 (10th Cir. 2000) (stating district court may exercise supplemental jurisdiction over state claims only when federal claim was not insubstantial from the outset); see also 28 U.S.C. § 1367(c)(3).